



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

VALLEY REGIONAL OFFICE  
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Robert G. Burnley  
Director

R. Bradley Chewning  
Regional **Director**

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO:**

#### **DirecTV Operations, LLC**

AST Facility at Shady Elm Road, Frederick County, Virginia  
Facility Identification No.: N/A  
PC# 2004-6091

#### **SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and DirecTV to resolve certain violations of the State Water Control Law and regulations at DirecTV's Aboveground Storage Tank Facility located at Shady Elm Road near the intersection of Apple Valley Road in Frederick County, Virginia.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "AST" means aboveground storage tank, as further defined in 9 VAC 25-91-10.

4. “DirecTV” means DirecTV Operations, LLC, a California limited liability company licensed to conduct business in Virginia, and the AST “operator” within the meaning of Virginia Code § 62.1-44.34:14.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality.
7. “Facility” means the ASTs owned and operated by DirecTV located at DirecTV’s satellite uplink site off of Shady Elm Road near the intersection with Apple Valley Road in Frederick County, Virginia. The facility includes two ASTs.
8. “Order” means this document, also known as a Consent Special Order.
9. “Regional Office” means the Valley Regional Office of the Department.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. DirecTV is the operator of the ASTs at this Facility within the meaning of Virginia Code § 62.1-44.34:14, which states that an operator “means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.”
2. The operator failed to register the AST Facility with DEQ and/or the Board. Both Va. Code § 62.1-44.34:19.1 and 9 VAC 25-91-100 provide that operators of AST facilities with an aggregate storage capacity of more than 1320 gallons must register such facility with the DEQ or the Board. The DirecTV site qualifies as such a facility and is governed by these regulations.
3. On January 14, 2004, Dietze Construction, on instruction from DirecTV, disclosed to DEQ that an unpermitted discharge of fuel oil occurred on September 17, 2003. DirecTV had discovered that its contractor had failed to notify DEQ. A Notice of Violation (NOV) was issued to DirecTV on February 12, 2004 for failure to register the AST facility (in violation of Va. Code § 62.1-44:19.1 and 9 VAC 25-91-100), for an unpermitted discharge of fuel oil (in violation of Va. Code § 62.1-44.34:18), and for failing to report the unpermitted discharge to DEQ or the Board (in violation of Va. Code § 62.1-44.34:19).

4. Subsequent inquiry by DEQ has determined that on September 17, 2003, an accidental fuel oil discharge of approximately 40 gallons occurred at the facility's smaller of two AST's (the "day tank") located at the site. The discharge was the result of an accidental leak that occurred during intensive construction at the site by DirecTV's general contractor, Dietze Construction Group of Chantilly, Virginia. This discharge occurred in an apparent violation of State Water Control Law Section 62.1-44.34:18, which prohibits the unpermitted discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth.
5. Further, the operator failed to notify DEQ or the Board immediately upon learning of the spill, in violation of Code § 62.1-44.34:19, which requires that "any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems... shall, immediately, upon learning of the discharge, notify the [State Water Control] Board...."
6. On or about September 18, both Dietze Construction and Dietze's subcontractor, H & W Construction, excavated and removed contaminated soil and gravel in the vicinity of the spill. An area of approximately six feet by eight feet and a depth of three feet of soil and gravel was removed and oil absorbent material was applied over affected areas of the concrete containment tank pad. Approximately four cubic yards of material in total was removed and was apparently applied to the land in another off-site construction project.
7. Engineering Consulting Services, Ltd. (ECS), retained by Dietze Construction to conduct soil sampling and analysis at the facility on October 2, 2003, collected samples in accordance with EPA guidelines and submitted to EnviroCompliance Laboratories, Inc. for diesel range organic petroleum hydrocarbons analysis per EPA Method 8015B. Testing indicated that the petroleum contaminated soil did not meet the requirements for "clean fill" in accordance with Virginia Solid Waste Management Regulations (VSWMR), 9 VAC 20-80-10 *et seq.* However, the contaminated soil was removed off-site and applied in another construction project. Consequently, H & W Construction, contracted by DirecTV, failed to properly follow the disposal requirements outlined in 9 VAC 20-80-700D, and DirecTV was not authorized to dispose of the soil off-site for use as clean fill for another construction project.
8. ECS has certified that appropriate cleanup levels at the site of the discharge have been met and recommended that no further corrective actions or abatement measures were necessary. DEQ is satisfied that remedial and cleanup measures were sufficiently followed as set out in 9 VAC 20-80-230, with the exception of the failure to follow proper VSWMR disposal procedures in the removal and off-site disposal of contaminated soil, as discussed in items #6 and #7 above.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders DirecTV and DirecTV agrees that:

1. To remedy the alleged violations described above and bring the Facility into compliance with the Regulations, DirecTV shall properly register the Facility within 30 days of the effective date of this Order.
2. DirecTV shall pay a civil charge of \$2,000.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

3. DirecTV shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of DirecTV, for good cause shown by DirecTV, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law,

rule, or regulation or any allegations contained herein. For the purpose of this Order only, DirecTV admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.

4. DirecTV consents to venue in the Circuit Court of Frederick County for any civil action taken to enforce the terms of this Order.
5. DirecTV declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and for the purposes of this Order only, it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by DirecTV to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. DirecTV shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. DirecTV must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. DirecTV shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

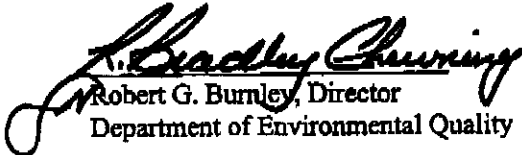
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which DirecTV intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and DirecTV. Notwithstanding the foregoing, DirecTV agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. DirecTV petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order. The Director's determination that DirecTV has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to DirecTV.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve DirecTV from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By its signature below, DirecTV voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec 6, 2004.

  
 Robert G. Burnley, Director  
 Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by DirecTV Operations, LLC:

Date: 6/23/04 By: Daniel M. Fawcett Title: EVP  
 Daniel M. Fawcett  
 Exec. VP  
 Legal and Business  
 Affairs and  
 General  
 Counsel

Commonwealth of Virginia, City/County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by  
 \_\_\_\_\_, who is \_\_\_\_\_ of DirecTV Operations, LLC, on behalf of the  
 Company.

Date my commission expires \_\_\_\_\_

Notary Public

ALL PURPOSE ACKNOWLEDGMENT  
 SEE ATTACHED CALIFORNIA

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

LOS ANGELES

} ss.

On JUNE 23, 2004, before me, Ruby Ann Ross-Gilliam

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DAN FAWCETT

Name(s) of Signer(s)

- ☒ personally known to me  
☐ ~~proved to me on the basis of satisfactory evidence~~



to be the person(x) whose name(x) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.

WITNESS my hand and official seal.

Ruby Ann Ross-Gilliam  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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